(3)

(1) C.S. 1081

IN THE HIGH COURT OF JUDICATURE AT BILASPUR CHHATTISGARH

WRIT PETITION NO 1290 OF 2004

PETITIONER

Mohan Ram S/o Nankusiya Ram
Aged about 30 years R/o Gram - Post- Bailsari, Takhatpur, District - Bilaspur (C.G)

P. R. No. 12-9-04
Presented by Shri Sapnesh Kashyap
dated 6-5-04

VERSES

RESPONDENT

1. State of Chhattisgarh
Through : Secretary Excise
Department D.K. Bhavan
Raipur (C.G.)

2. Excise Commissioner
Excise Department
Raipur (C.G)

3 Assisstant Commissioner
Excise Department
Distt Bilaspur (C.G)

कपथ आयुक्त
के समक्ष
6/5/04
बिलासपुर तहसील कोर्ट

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

(38)

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.No.1290 of 2004

Mohan Ram
Vs.
State of Chhattisgarh

Dr. Shailesh Ahuja, learned counsel for the petitioner.

Shri Vivek Sharma, Panel Lawyer for respondents Nos.1 to 3.

O R D E R
(25/10/2005)

This oral order is passed by Hon'ble Shri Justice

Sunil Kumar Sinha, J

Heard finally with the consent of both the parties.

By way of this Writ Petition filed under Article 226/227 of the Constitution of India, the petitioner has prayed for a direction to the respondents for his reinstatement on the post of Chowkidar in Excise Department at the Collectorate rate.

The facts of the case are that the petitioner was appointed as a Chowkidar on Collectorate rate for a period of 89 days vide order dated 25/06/96. This is his first appointment order. The copy of this order has been filed as Annexure P-1. After issuance of the said appointment order, the petitioner joined and worked as Chowkidar for a long period as many such orders were issued to him time to time and ultimately the last order was issued to the petitioner on 30/06/97

and he was continuing for the next 89 days by virtue of this order. During the tenure of this order, a Criminal Case under Section 376 (2) (G) of the IPC was registered against the petitioner and the charge sheet was also filed. A session trial was conducted vide ST No.410/96 by the Sessions Court, Bilaspur, and ultimately vide order dated 23/7/97, the petitioner was punished for 10 years R.I. and with a fine of Rs.2000/-. It appears that thereafter, the petitioner filed an appeal before the High Court of Madhya Pradesh, which was decided vide Criminal Appeal No.2361 and 1581/97 and the same was dismissed. After dismissal of the aforesaid appeal by the High Court of Madhya Pradesh, two appeals vide Nos.858-859/2000 were preferred before the Apex Court and the Apex Court after hearing these appeals allowed the same by the judgment and order dated 9th October, 2001 and the conviction of the petitioner as recorded by the Trial Court and upheld by the High Court was set aside. The petitioner was acquitted of the charges framed against him. The judgment of the Apex Court passed on 09/10/2001 is filed as Annexure P-2.

The case of the petitioner is that due to arrest in Criminal Case, referred to above in the year 1997, the petitioner could not continue in his services on the basis of the last appointment order issued on 30/06/1997 for a period of 89 days. Therefore, he claims

that when he has been acquitted from the Apex Court in the aforesaid Criminal Appeal, he should be reinstated and if possible he should be awarded with the legally entitled dues payable to him.

The submission of learned counsel for the petitioner is that since the petitioner was falsely implicated in this case and he could not continue with his services on account of illegal arrest of the petitioner, he may be directed to be reinstated on the same capacity and on the same post on which he was working in the year 1997 i.e. on the capacity of daily wages employee on the Collectorate rate.

Opposing this argument advanced by learned counsel for the petitioner, State counsel submits that since the appointment of the petitioner was not a regular appointment and he remained absent from his duty in the period for which he was appointed and thereafter, he continued to remain absent, therefore, after the lapse of 89 days from the last appointment order issued to the petitioner which according to them was issued on 30/06/97, the petitioner is having no entitlement either for reinstatement or for continuation in the aforesaid service.

I have heard the learned counsel for the parties at length and also perused the records filed alongwith the writ petition. The first appointment of the petitioner on daily wages was made for 89 days on 25/6/1996 and according to the pleadings of the petitioner he

continued up to 30/06/1997 and on 30/06/1997 the last appointment order was issued to him. The order dated 30/06/97 shows that the nature of the appointment of the petitioner was that of a daily wager and he was appointed for a period of 89 days on the Collectorate rate and the aforesaid appointment was totally of temporary nature. After this letter of appointment, no other letters have been issued to the petitioner.

In the facts and circumstances of this case, after termination of 89 days from 30/06/1997, the petitioner will have no right to continue in service unless a fresh order of appointment is issued to him or his appointment is extended by some subsequent order by the State Government or the concerned department. The petitioner is not in a position to show that any such order was issued to him after completion of 89 days which is after the order dated 30/06/1997. Therefore, the legal position emerges that after termination of 89 days, after 30.6.1997 if no other order is issued in favour of the petitioner, the petitioner will have no lien over the job for which he was appointed on temporary basis for a period of 89 days only.

Another aspect of the matter is that when the appointments are made for certain periods then all the rights of the person employed under such appointment is subject to the completion of the period only and his rights under the aforesaid appointment can be

agitated only if the period of appointment is either extended or some other order is issued in his favour.

Here in the present case, the petitioner could not appear in service from a particular day which may be as an effect of his arrest made in a case but the fact remains that his services were not continued after completion of 89 days from 30/06/1997. Therefore, in the opinion of this Court, the petitioner will have no right either for reinstatement or for any kind of monetary benefit whatsoever is claimed by the petitioner.

The petition has no merit and the same is dismissed.

At this stage, learned counsel for the petitioner submits that since the petitioner remained absent for no fault on his part as he was falsely implicated in a case and ultimately was acquitted by the Apex Court, therefore, an opportunity should be given to the petitioner to file a representation before the concerned authority and the concerned authority may be directed to consider his representation for his fresh appointment subject to availability of the post as on today.

In the facts and circumstances as stated above, there is no necessity for giving any direction to the concerned authority. The petitioner is always free to file a representation before the concerned authority and the concerned authority is also free to

consider the representation of the petitioner filed before him. However, this Court can only observe that if such a representation is filed by the petitioner then it is expected that the concerned authority would consider the representation of the petitioner, subject to the availability of the post, scheme and requirement for his reappointment/reengagement on Collectorate rate in accordance with law.

With the aforesaid observations, this petition stands finally disposed of

C.C. as per rules.

Sd/-
Sunil Kumar Sinha
Judge